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Kyle Everett

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re

BENJA INCORPORATED

Debtor.

Case No. 20-30819 DM

Chapter 11

**TRUSTEE'S STATEMENT
REGARDING DESIGNATION OF
RESPONSIBLE INDIVIDUAL**

KYLE EVERETT, Chapter 11 Trustee (the "Trustee") in this matter, files the following statement regarding the Designation of Responsible Individual required by Local Rule 4002-1.

The rule requires a debtor that is not an individual to file an application to designate a natural person to be responsible for the duties and obligations of the debtor or debtor-in-possession. The application is to be filed with the petition or promptly after the filing of the case. Benja Incorporated ("Debtor") has not filed an application even though this case was filed on October 15, 2020. The petition and related documents filed by the Debtor were signed by Andrew Chapin as President and CEO. The Trustee understands, however, that Mr. Chapin was arrested and charged by the federal government with various crimes related to his activities with the Debtor. Given the situation, the Trustee does not believe that Debtor will seek to designate Mr. Chapin.

Based on the Trustee's current investigation, he is not aware of anyone else who might serve as the Responsible Individual in the case. Therefore, while Local Rule 4002-1(b)

1 provides for a successor natural person, which itself anticipates a person having been initially
2 designated, the Trustee is not aware of anyone who could be appointed as the successor
3 Responsible Individual. Local Rule 4002-1(b) also refers to the Debtor filing a statement that
4 there is no natural person to serve as the Responsible Individual. The Trustee does not know if
5 the Debtor intends to do this, but the Trustee is not aware of anyone who might serve in that
6 capacity.

7 Moreover, to the extent any party or the Court might consider that Mr. Everett should
8 apply to be designated or serve as the responsible individual, the Trustee believes such
9 designation is not appropriate under the rule. The rule anticipates an individual being
10 appointed to act on behalf of the entity and to, for example, provide information to the Trustee.
11 The Trustee cannot fill both his role as trustee and the role of the Debtor's responsible
12 individual. Finally, there is arguably a matter of corporate governance. The responsible
13 individual is typically identified in a corporate resolution passed by the Board of Directors.
14 The Trustee understands that at the time of filing this case, Mr. Chapin was the only officer and
15 only director. There is currently no person through whom the corporation can act.

16 Mr. Chapin did not appear at the initial debtor interview and the meeting of creditors.
17 The Trustee does not believe Mr. Chapin will be available for the continued meeting of
18 creditors. If he does appear, the Trustee does not expect him to answer questions. The Trustee
19 is hoping to obtain Mr. Chapin's assistance in unwinding Debtor's business affairs and
20 recovering funds for the creditors. At present, however, the Trustee does not know if he will
21 receive such assistance. The Trustee does not have a proposal to the Court in terms of any
22 orders it might enter in light of the situation, but the Trustee wanted to bring the situation to the
23 attention of the Court and the creditors.

24 Dated: December 7, 2020

FINESTONE HAYES LLP

26 /s/ Stephen D. Finestone
27 Stephen D. Finestone
28 Attorneys for Kyle Everett

1 I am over the age of 18 and not a party to this action. My business address is 456
2 Montgomery Street, Floor 20, San Francisco, California 94104. I caused a true and correct copy
3 of the following documents:

4 **TRUSTEE'S STATEMENT REGARDING DESIGNATION OF RESPONSIBLE
5 INDIVIDUAL**

6 to be served in the manner stated below.

7 **1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")**

8 Pursuant to controlling General Orders and Local Bankruptcy Rules, service of the foregoing
9 was accomplished by the court via NEF and link to the document. On December 7, 2020, I
10 checked the CM/ECF docket for this action and determined that the following persons are on
11 the Electronic Mail Notice List to receive NEF transmission at the email addresses stated
12 below.

13 Jared Day on behalf of the Office of the U.S. Trustee
14 Jared.a.day@usdoj.gov

15 Paul Manasian on behalf of Benja Incorporated
16 manasian@mrlwsf.com

17 Tanya Behnam, Randy Soref, Jerry L. Switzer, Jr. and Jean Soh on behalf of Busey
18 Bank
19 tbehnam@polsinelli.com
20 jsoh@polsinelli.com
21 rsoref@polsinelli.com
22 jswitzer@polsinelli.com

23 Sophia Ashley Perna-Bank on behalf of E-Revshare Core, LLC
24 spernaplank@jspanllp.com

25 Steven Soulios on behalf of XRC Fund III
26 ssoulios@lawnynj.com

27 **2. SERVED BY OVERNIGHT MAIL**

28 On December 7, 2020, I verified that the following persons and/or entities were served at the
last known addresses in this action by overnight Federal Express mail.

3. SERVED BY EMAIL

On December 7, 2020, I served the following persons and/or entities by email.

I declare under penalty of perjury under the laws of the United States of America that the
foregoing is true and correct. Executed on December 7, 2020, in San Francisco, California.

/s/ Stephen D. Finestone
Stephen D. Finestone